

147 FERC ¶ 61,075
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2014

In Reply Refer To:
East Kentucky Power
Cooperative, Inc.
Docket No. ER14-1610-000

Debra D. Roby
Jennings, Strouss & Salmon, PLC
1350 I Street, NW
Washington, DC 20005

Dear Ms. Roby:

1. On March 28, 2014, East Kentucky Power Cooperative, Inc. (EKPC) filed a request for limited waiver of the deadlines set forth in section 6.6(g) of Attachment DD to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).¹ Specifically, EKPC seeks a one-time waiver of the deadlines for requesting a unit-specific exemption from the must-offer requirement. As discussed below, we grant EKPC's request for limited waiver.
2. EKPC states that the limited waiver is necessary to allow EKPC to secure an exception to the must-offer requirement with respect to its William C. Dale Station's units 3 and 4 (Dale Units), each with a nameplate capacity of 80 MW, for the May 2014 Reliability Pricing Model Base Residual Auction (May 2014 Auction) for Delivery Year 2017-2018 because the units are reasonably expected to be physically unable to participate in the May 2014 Auction.²
3. EKPC states that this request reflects the Notice of Deactivation it submitted on March 27, 2014 to PJM and the PJM Independent Market Monitor (Market Monitor), well in advance of the 90-day notice requirement under section 113.1 of the PJM Tariff,

¹ [PJM Tariff Attachment DD, section 6.6\(g\), Market Power Mitigation \(8.0.0\).](#)

² Waiver Request at 1.

and is necessary to allow PJM and the Market Monitor to process EKPC's requests for exceptions to the must-offer requirement for the May 2014 Auction.³

4. EKPC explains that its decision to retire the Dale Units derives from its 2012 Integrated Resource Plan, which included a preliminary evaluation of the impacts of the Environmental Protection Agency's (EPA) Mercury and Air Toxics Standards (EPA Standards) on EKPC's coal-fired resources and calculated that EKPC would need up to 300 MWs of capacity by October 2015. Subsequently, EKPC initiated a Request for Proposal (RFP) process to evaluate alternatives to remedy the 300 MW capacity shortfall expected to result from actions required by EKPC to comply with the EPA Standards. As part of this RFP process, EKPC evaluated the costs of retrofitting the Dale Units and determined that such an option is not economically justifiable. EKPC submitted a proposal to the Kentucky Public Service Commission (Kentucky PSC) to conduct retrofit work in its Cooper Generating Station (Cooper Station) in order to partially meet the expected capacity shortfall. The Kentucky PSC approved EKPC's proposal to retrofit the Cooper Station by order dated February 20, 2014.

5. EKPC states that, but for the lateness of its exception request, it is eligible to seek an exception under the PJM Tariff. EKPC asserts that, under section 6.6(g) of Attachment DD of the PJM Tariff, a Capacity Market Seller may seek approval for an exception to the must-offer requirement in any PJM auction by submitting a written request to the Market Monitor and the PJM Office of Interconnection, provided it can establish that the resource "is reasonably expected to be physically unable to participate in the relevant auction" and thus, qualifies for an exception to the must-offer obligation. EKPC states that, in this case, it submitted a Notice of Deactivation to the Office of Interconnection on March 27, 2014. However, for the May 2014 Auction, which begins on May 12, 2014, Capacity Market Sellers were required to submit a preliminary exception request by November 1, 2013, and a final notification by December 1, 2013. EKPC states that it did not submit its request for exception for the May 2014 Auction timely due to inherent lags in the required state regulatory and internal administrative approval processes. According to EKPC, the period of time required for EKPC to develop and present the capacity plan, including the retirement of the Dale Units, to its Board following the completion on February 20, 2014 of the Kentucky PSC proceeding was such that the deadlines established in the PJM Tariff to request the must-offer exception had already passed. Therefore, EKPC is seeking a limited waiver of section

³ *Id.* at 4.

6.6(g) of Attachment DD of the PJM Tariff to allow for the submission of its request after the December 1, 2013 deadline.⁴

6. EKPC requests that, consistent with the provision in section 6.6(g) of Attachment DD, the Commission issue an order granting this limited Waiver Request, under expedited action by April 30, 2014, so that PJM and the Market Monitor may consider the must-offer exception requests for the Dale Units for the May 2014 Auction.⁵ EKPC asserts that it has been in communication with PJM and the Market Monitor concerning the retirement of the Dale Units.

7. EKPC argues that good cause exists to grant its request because: (1) it acted diligently to obtain an evaluation of the feasibility of the Dale Units being available for the May 2014 Auction, and in good faith promptly requested an exception from the must-offer requirement to redress the missed December 1, 2013, deadline quickly after the Kentucky PSC approved EKPC's proposal to retrofit the Cooper Station; (2) its request is limited in scope in that it is asking for waiver of the procedural provisions of the PJM Tariff for the May 2014 Auction, not for a substantive provision; (3) granting the waiver would remedy a concrete problem by allowing EKPC to claim an exception to the must-offer requirement that it is otherwise entitled to claim under the PJM Tariff and ensure that the Dale Units, which will be physically decommissioned, are not committed to provide capacity that they will be unable to deliver; and (4) granting the request will not have undesirable consequences for PJM, the Market Monitor or any other third parties.

8. Notice of EKPC's March 28, 2014 filing was published in the *Federal Register*,⁶ with protests or interventions due on or before April 7, 2014. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. PJM submitted an out-of-time motion to intervene on April 8, 2014. No protests or adverse comments were filed.

9. We find that good cause exists to grant EKPC's request for waiver of the deadline for seeking an exception to the must-offer requirement for the May 2014 Auction, set forth in section 6.6(g) of Attachment DD of the PJM Tariff. EKPC's failure to meet PJM Tariff's requirements in a timely manner was unintentional and in good faith. As EKPC

⁴ Waiver Request at 3-4.

⁵ *Id.* at 5.

⁶ 79 Fed. Reg. 67 (2014).

⁷ 18 C.F.R. § 385.214 (2013).

explains, it did not submit timely requests for exemption by the December 1, 2013 deadline because of inherent lags in the required regulatory and internal administrative approval processes. The EKPC Board could not act on the retirement plan of the Dale Units until after the completion of the Kentucky PSC proceeding on February 20, 2014. Thereafter, EKPC promptly requested the exemption. EKPC's request is limited in scope in that it seeks waiver of the procedural provisions of the PJM Tariff only for the 2017-2018 Auction. We further find that granting the waiver will remedy a concrete problem by allowing EKPC to obtain an exception to the must-offer requirement that it is otherwise entitled to claim under the PJM Tariff, thereby ensuring that the Dale Units are not committed to provide capacity that they will be unable to deliver. Finally, granting the waiver will not have undesirable consequences for PJM, the Market Monitor or any other third parties, and no parties oppose the request. Accordingly, we grant EKPC's request for limited waiver of the deadlines set forth in section 6.6(g) of Attachment DD of the PJM Tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.